

Internal Revenue Service

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Washington, DC 20224

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Person To Contact:

Telephone Number:

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Legend

X =

Trust =

A =

B =

State =

D1 =

D2 =

D3 =

D4 =

Dear

This responds to a letter dated October 14, 2009, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code.

The information submitted states that X was incorporated under the laws of State and made an election to be treated as a subchapter S corporation effective D1. A was a shareholder of X from its inception until A's death. On D2, A's estate transferred shares of X to Trust pursuant to the terms of A's will. Trust qualified under § 1361(c)(2)(A)(iii) as an eligible shareholder for two years from the date the stock was transferred to it pursuant to the terms of the will. X represents that Trust qualified as an electing small business trust ("ESBT"). However, the trustee of Trust failed to properly file the ESBT election. As a result, X's S corporation election terminated on D3, after the two-year period following the transfer of the stock to the testamentary trust. On D4, Trust terminated and distributed all its shares of X to B, the individual beneficiary of Trust.

X represents that the failure to file the ESBT election for Trust was not motivated by tax avoidance or retroactive tax planning. X and its shareholders have agreed to make any adjustments the Commissioner may require, consistent with the treatment of X as an S corporation.

Section 1361(a)(1) of the Code defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that the term "small business corporation" means a domestic corporation which is not an ineligible corporation and which does not have as a shareholder a person (other than an estate, a trust described in § 1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1361(c)(2)(A)(iii) provides that, for purposes of § 1361(b)(1)(B), a trust with respect to stock transferred to it pursuant to the terms of a will may be a shareholder, but only for the 2-year period beginning on the day on which such stock is transferred to it. Section 1361(c)(2)(A)(v) provides that an ESBT may be a shareholder. Section 1361(e) defines an ESBT.

Section 1362(f) provides that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in such termination, steps were taken so that the corporation for which the termination occurred is a small business corporation, and (4) the corporation for which the termination occurred, and each person who was a shareholder in the corporation at any time during the period specified pursuant to § 1362(f), agrees to make adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting

in such termination, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Based on the information submitted and the representations made, we conclude that X's election to be treated as an S corporation terminated on D3, upon the failure by the trustee of Trust to properly file an ESBT election for Trust. We also conclude that the termination constituted an inadvertent termination within the meaning of § 1362(f). Accordingly, X will be treated as continuing to be an S corporation from D3 and thereafter, provided that X's S corporation election is not otherwise terminated under § 1362(d). Moreover, Trust will be treated as an ESBT from D3 until its termination on D4.

This ruling is contingent upon the trustee of Trust filing an ESBT election effective D3 with the appropriate service center. The ESBT election must be filed within 60 days following the date of this letter and a copy of this letter should be attached the election.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed on whether X was or otherwise eligible to be treated as an S corporation or whether Trust is eligible to be an ESBT. This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being forwarded to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for section 6110 purposes

cc: